

STATE OF MICHIGAN
COURT OF APPEALS

JANET KASSUBA, Personal Representative of
the Estate of RAYMOND KASSUBA, Deceased,

UNPUBLISHED
October 19, 2001

Plaintiff-Appellant,

V

DONALD COUSINEAU, D.O., JOSEPH
ANDERS, D.O., and OTSEGO MEMORIAL
HOSPITAL,

No. 223634
Otsego Circuit Court
97-007439-NH

Defendants-Appellees.

Before: Cavanagh, P.J., and Markey and Collins, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the order granting defendants' motion to exclude expert testimony and dismissing plaintiff's complaint. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent sought treatment from defendant Cousineau for chest pains, fatigue, and shortness of breath. Cousineau arranged for decedent to take a treadmill stress test administered by defendant Anders at Otsego Memorial Hospital. Decedent suffered a heart attack during the test and died later that day. An autopsy determined that the cause of death was myocardial infarction complicated by severe calcified aortic stenosis.

Plaintiff brought this medical malpractice action asserting that defendants should have detected a heart murmur and diagnosed aortic stenosis before proceeding with the stress test. Defendant doctors both testified that they did not detect a heart murmur during their examinations.

Plaintiff's expert witnesses testified that decedent's aortic stenosis would have caused a heart murmur that any reasonably competent physician should have detected. A heart murmur is a definitive symptom that should have led defendants to suspect aortic stenosis and would have made the stress test inappropriate. The trial court, relying on *Badalamenti v William Beaumont Hospital*, 237 Mich App 278; 602 NW2d 854 (1999), granted defendants' motion to exclude plaintiff's expert testimony because it contradicted the established fact that none of the treating doctors had detected that the decedent had a heart murmur.

This Court will review a trial court's decision to strike an expert witness for an abuse of discretion. *Phillips v Mazda Motor Mfg Corp*, 204 Mich App 401, 412; 516 NW2d 502 (1994). A trial court abuses its discretion in an evidentiary matter when its ruling has no basis in law or fact. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411; 443 NW2d 340 (1989). There must be facts in evidence to support the opinion testimony of the expert witness. *Id.* An expert need not negate all of the possible causes that might be asserted by an opponent. *Id.* at 414. It is sufficient if the expert has an evidentiary basis for his own conclusions. *Id.*; *Green v Jerome-Duncan Ford, Inc*, 195 Mich App 493, 498; 491 NW2d 243 (1992). An expert's opinion is objectionable if it is based on assumptions that do not accord with the established facts. *Green, supra* at 499.

The trial court erred in its application of *Badalamenti, supra*, which did not involve the exclusion of an expert witness. In *Badalamenti, supra* at 288-289, this Court found that there was insufficient evidence to support the expert's opinion on which the defendants' negligence was predicated. Here, plaintiff was required to show that decedent must have had a heart murmur that defendants failed to detect. Defendants' testimony that they did not detect a heart murmur is consistent with plaintiff's claim that they were negligent. Plaintiff's experts relied on the autopsy to provide the factual basis for their opinion that the aortic stenosis would have caused a heart murmur that any reasonably competent physician should have detected. Thus, the experts had an evidentiary basis for their conclusions. *Mulholland, supra*. The trial court abused its discretion in excluding their testimony and dismissing the case.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jeffrey G. Collins